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*Alfred Friendly*

British Legal Monstrosity Is Stirring New Controversy

LONDON—In the late spring of 1878, Charles Marvin, a clerk in the British Foreign Office, decided to augment his princely wage of tenpence an hour by making available to a newspaper, *The Globe*, the terms of a document he was copying. It was a secret agreement with Russia, newly concluded. Happily, *The Globe* paid—and published.

Marvin was brought to trial—and acquitted. The charge of larceny could not be sustained: he had not deprived his employers of their property. Nor, as it turned out, was there anything in the statute books forbidding his disclosure of what he knew or the publication of what he disclosed.

Out of the resulting consternation was born the British Official Secrets Act. As amended in 1911, it stands as a legal monstrosity, a burlesque of the excellence and fairness of law and judicial procedure on which Britain prides itself. It is a statute that must be, and fortunately is, violated a hundred times a day to permit democracy to function on the basis of an informed citizenry. Its enforcement depends on the whim of the attorney general. It has been invoked perhaps a dozen times in its history, and then on criteria that have no common denominator to provide a clue to a citizen of by what act he puts himself in peril of prosecution.

One section, not in issue, is directed against espionage. A second, very much in issue this week, makes it a misdemeanor for a civil servant to disclose any official information "entrusted in confidence to him"—whatever that means—or for anyone else "knowingly" to receive it.

IT WAS INVOKED Tuesday apparently for the first time in eight years, against Brian Roberts, editor of the *Sunday Telegraph*; Jonathan Aitken, a young Conservative candidate for Parliament, (great-nephew of Beaverbrook); and a former British member of the inter-

national observer team in Biafra, Col. Douglas Jeffrey Cairns. The summons on them followed publication two months ago of a summary of an elaborate report written in December by the military adviser to the British High Commissioner (ambassador) to Nigeria, on the status, deployment and prospects of the federal Nigerian forces, then battling the Biafran secessionists.

Some of it was highly uncomplimentary to the federal army.

The *Telegraph's* scoop was not as great a triumph as the *Globe's*, 92 years earlier, because the day it was published, Jan. 11, the Biafran effort collapsed, the civil war was over and the report was academic.

The *Telegraph* paid \$1,200 to a literary agent, Curtis Brown Limited, which remitted all of it to a Biafran relief charity. It is no secret that the agency received the report from Aitken, an ardent Biafran supporter. Another copy, it is known, went to the Biafran leader, Col. Ojukwu, giving him probably the most precious military information he ever received. A third went to Hugh Fraser, another pro-Biafran member of Parliament, who "published" it at the time, in speeches and television appearances, as vociferously as he knew how. Curiously, he has not been charged, and wrote a letter to the *London Times* Thursday demanding to know "what goes on?" Col. Cairns is accused of passing the document to another British army officer, a major general, but he has not been charged either.

What goes on indeed? What kind of a law lets some receivers be indicted, others not? And why any prosecution of a disclosure that in no way affected British security?

THE BEST GUESS is that The *Telegraph's* publication incensed the federal Nigerian leader, Gen. Yakubu Gowon, and gravely damaged British diplomatic relations with Nigeria. So, it is assumed, in an attempt to placate the outraged Gowon and restore goodwill Foreign Minister Michael Stewart demanded a show of action.

The benefits, if any, the prosecution will gain for Britain in Nigeria will be offset 10-fold by the loss to the Wilson government in Britain. As always in such cases, the press will rally unanimously behind The *Telegraph*, the government will be denounced and revenge will be taken. The general view here is that the government was out of its mind to bring the case. It is recalled that an important factor in the narrow Conservative defeat in the national elections of 1964 was the press reaction to the prosecution of a pair of journalists vastly less worthy of support than the *Telegraph's* editor.

The accused will be arraigned next month. They face a fine and a maximum of two years in jail. It appears that no one will contest the facts of disclosure of a confidential document and its "knowing" receipt. What is at issue is a law that is violated every time a civil servant tells almost anything to almost anybody. The United States seems to do nicely without any such statute; the sanction against an American civil servant who shoots his mouth when he shouldn't is firing.